IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 421 (M/S) OF 2003

(Urgency Application No. 4101 of 2003)

Baba Kali Kamli Wala
Panchayat Kshetra Rishikesh, Dehradun
through Manager Sri P.C. Pandey,
now Roshan Lal Sharma, Attorney of Society. ……..Petitioner.

Versus

1. State of Uttaranchal through Secretary, Forest Department, Dehradun.
2. District Judge, Uttarkashi.
3. Deputy Conservator of Forest Upper Yamuna Van Prabhag Barkot, Uttarkashi. ……. Respondent

12.04.2006

Sri V.S.B. Negi, Learned Counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Sri V.B.S. Negi, Counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 20.02.2003 passed by the respondent no. 3.

Briefly stated according to the petitioner, the "Society" of the petitioner is registered under the provisions of Societies Registration Act 1860. The society is to provide Food and Shelter to the pilgrims on their way to Yamuntri. For this purpose, the society got some land on lease from Sawai Range Upper Yamuna Van Prabhag on which society constructed the Tinshed for convenience for the pilgrims. According to the lease deed dated 01.01.58, the term of the lease was for a period of 30 year and will continue to the period of maximum 90 days.

The petitioner has submitted that the "Society" has applied for extension of the term of lease for a further period of 30 years and also deposited the amount with the Forest Department. However, due to illegal act of the respondent, the petitioner has

filed the suit no. 26/97 under Section 38 of the Act on 30.09.1997 before the Civil Judge (J.D.), Purola District Uttarkashi Praying for restraining the respondent in interfering the lease held property and not to evict the petitioner and simultaneously an application was also filed under Order 39 Rule 1 & 2 C.P.C. praying for grant of temporary injunction against the respondents. The Civil Judge (J.D.) has passed an order maintaining the status quo.

On 24.11.1997, the respondents have filed the written statement in suit no. 26/97 and issues were framed. The respondents thereafter have filed the amendment application, which was rejected. The respondents have preferred the revision, which was allowed, and by the aforesaid amendment, respondents were directed to amend the written statement.

The short submission of the petitioner is that after the framing of the issues, it was not open for the respondent to file the amendment. In view of the amendment made in Order 6 Rule 17 of the Code of Civil Procedure.

The grievance of the petitioner is that the District Judge without considering the facts allowed the revision and the same is liable to be quashed.

In view of the above, liberty is given to the petitioner to file the application for reconsideration of the order passed by the Civil Judge (J.D.).

Subject to the aforesaid observation, writ petition being is disposed of. No order as to costs.

(Rajesh Tandon, J.)

12.04.2006
Jain